

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 11-174—SB 954

Judiciary Committee

Appropriations Committee

**AN ACT CONCERNING THE ELECTRONIC RECORDING OF
CUSTODIAL INTERROGATIONS**

SUMMARY: Under this act, a statement made by a person investigated for or accused of a capital felony or class A or B felony during a custodial interrogation at a place of detention is presumed inadmissible as evidence against him or her in a criminal proceeding unless:

1. there is an audiovisual recording of the custodial interrogation made by an electronic or digital audiovisual device and
2. the recording is substantially accurate and not intentionally altered.

The act's presumption can be overcome under certain circumstances and the act allows a statement to be admitted for impeachment purposes only (to question the credibility of a person's testimony). The act includes a number of exceptions to the recording requirement.

By January 1, 2012, the act requires the chief state's attorney, with the Police Officer Standards and Training Council and a Connecticut Police Chiefs Association representative, to set standards for recording equipment, including transcriptions, and for training law enforcement officials in using the equipment.

EFFECTIVE DATE: January 1, 2014, except the provision on setting standards is effective upon passage.

CUSTODIAL INTERROGATIONS AT A PLACE OF DETENTION

The act applies to oral, written, and sign language statements made as a result of a custodial interrogation at a place of detention. "Custodial interrogation" occurs when a:

1. person has been formally arrested or his or her freedom of movement is restrained as with a formal arrest and a reasonable person would believe he or she is not free to leave based on the circumstance and
2. law enforcement official initiates questioning or uses words or actions, other than those usually used during arrest and custody, that the official should know are reasonably likely to elicit an incriminating response from the person.

A "place of detention" is a police station or barracks, courthouse, correctional facility, community correctional center, or detention facility.

Under the act, if the court finds by a preponderance of the evidence that a person's custodial interrogation was not recorded or the recording was intentionally altered, any statement made during or following the non-recorded custodial interrogation, even if otherwise complying with the act, is presumed

OLR PUBLIC ACT SUMMARY

inadmissible in any criminal proceeding against the person.

The act's presumptions can be overcome if a preponderance of the evidence shows that the statement (1) was voluntarily given and (2) is reliable based on the totality of the circumstances.

EXCEPTIONS

The act does not prevent admission of a statement made:

1. in open court at trial or a preliminary hearing;
2. during a custodial interrogation when recording was not feasible;
3. voluntarily, whether or not the result of a custodial interrogation, that has a bearing on the person's credibility as a witness;
4. spontaneously and not in response to a question;
5. after routine questioning while processing the arrest;
6. by a person who requests, before making the statement, to answer questions only without a recording and there is a recording of the person agreeing to respond only if there is no recording; or
7. during a custodial interrogation outside Connecticut.

The act also does not prevent admission of statements that may be admissible under the law.

The act requires the state to prove by a preponderance of the evidence that one of these exceptions applies.

PRESERVING RECORDINGS AND CONFIDENTIALITY

The act requires preserving electronic recordings until the person's conviction of any offense related to the statement is final and direct and habeas corpus appeals are exhausted or the prosecution is legally barred.

The act makes an electronic recording by law enforcement of a person's custodial interrogation confidential and exempt from disclosure under the Freedom of Information Act. It prohibits transmitting the information to anyone except as needed to comply with the act.

OLR TRACKING: CR:VR:JL:DF